The common law of a sister state may be shown by expert testimony: *Raynham* v. *Canton*, 3 Pick. 293; *Tyler* v. *Trabue*, 8 B. Mon. 306; *Dougherty* v. *Snyder*, 11 S. & R. 84; and it is practically held in some cases that what may be called the resultant law, *i. e.*, the law considered as a compound of statute and interpretation thereof in connection with the common law may be so proved also: *Barkman* v. *Hopkins*, 6 Eng. 157; *Hooper* v. *Moore*, 5 Jones Law 130; *Danforth* v. *Reynolds*, 1 Vt. 265; *Dyer* v. *Smith*, 12 Conn. 384; see *contra*, *McDeed* v. *McDeed*, 67 Ill. 545. In some cases it is held that the common law may be proved by the reports of the state whose law is in question: *Billingsley* v. *Dean*, 11 Ind. 331; *Kline* v. *Baker*, 99 Mass. 254; *Ely* v. *James*, 123 Mass. 36; *Inge* v. *Murphy*, 10 Ala. 885; *Hale* v. *New Jersey Nav. Co.*, 15 Conn. 589; in New York it is provided by the Code that the reports shall be presumptive evidence of the common law of their state. In some cases where the reports were not directly received as evidence, the same result was reached by the court examining them for the purpose of construing the foreign law: *Ripple* v. *Ripple*, 1 Rawle 386; *Territt* v. *Woodruff*, 19 Vt. 183; and this even where the construction of a statute was in question.

HENRY BUDD, JR.

Court of Appeals of Maryland.

STONEBRAKER *v.* ZOLLICKOFFER ET AL.

A storm of wind blew down a quantity of timber growing on a farm, and the same was converted into cooper stuff and firewood, and sold by the trustee. On a bill filed by the tenant for life claiming the net proceeds of the sales made by the trustee, together with all interest which the same might have earned from the time it was received by him, or a reasonable time thereafter: *Held*, that to the extent of the amount of the net proceeds of sale realized for firewood, the complainant was entitled to the corpus of the fund, but as to the amount realized for the timber, he was entitled only to the interest during his life.

APPEAL from the Circuit Court for Washington county, in Equity.

By the will of Samuel Stonebraker a certain farm lying in Washington county, was devised to Henry F. Zollickoffer, in trust for the testator's son, George M. Stonebraker. In August 1873, a storm of wind blew down a large quantity of timber growing on this farm, and the same was converted into cooper stuff and firewood, and sold by the trustee. A bill of complaint was filed by George M. Stonebraker, claiming the net proceeds of the sales made by the trustee (about $1600) together with all interest which the same might have earned from the time it was received by him, or a reasonable time thereafter. The trustee and the husband of

one of the complainant's sisters answered that complainant had only a life-estate, and was not therefore entitled to the money.

The following opinion was delivered in the Circuit Court by

ALVEY, J. (After reciting the facts and construing the will.)—I conclude, therefore, that George M. Stonebraker takes but an equitable life-estate in the farm devised, subject to the condition and option therein mentioned; and if there were no children in being at the time of the devise, the devise to them operated by way of contingent remainder, which became vested upon the birth of the first child, subject to open and let in after-born children.

Such being the right and estate of George M. Stonebraker, the plaintiff, the next question is, what interest has he in the fund produced by the sale of the timber and wood from the farm?

Timber as such belongs to the inheritance. Tenant for life, unless he holds without impeachment of waste (which is not the case here), has no right to fell timber, except for necessary and proper repairs of the buildings and erections on the premises. And where timber has been blown down by wind, or severed by accidental cause, or has been cut down by a wrongdoer, it belongs to the party who has, at the time of severance, the first estate of inheritance. This was ruled in *Bowles's Case*, 11 Co. 79, and the principle has been acted upon in many subsequent cases. And where timber has been so severed, the fund arising from the sale of it, the court will order to be invested for the benefit of the estate—that is, the inheritance; and, according to the later cases, though otherwise in some of the earlier ones, the tenant for life, though he may be subject to impeachment for waste, if free from blame in respect to the particular timber severed, will be allowed to receive the interest of the fund for life. This is the settled rule in cases where the timber is cut by order of court for the benefit of the estate; and it has been decided that the reason and justice of the rule equally apply to the case where the timber has been severed by tempest, accident, or trespass, if the tenant for life be without fault: *Tooker* v. *Annesley*, 5 Sim. 235; *Waldo* v. *Waldo*, 7 Id. 261; *Bateman* v. *Hotchkin*, 31 Beav. 486; *Bagot* v. *Bagot*, 32 Id. 509. The tenant for life being entitled to the interest of the fund in the one case, it is difficult to perceive any good reason why he should not be entitled in the other; as in both cases he is equally deprived of the possible benefits that the trees might be to the use and enjoyment of his term, and that, too, without his fault.

But though the tenant for life may not be entitled either to the timber or the corpus of the fund arising from its sale, yet he is entitled to the old trees which cannot be used as timber, and to th tops and branches of trees which have been felled for timber, and also to the regular thinnings and trimmings of the trees in the woods; and these he may convert into firewood, or to any other use that he can make of them: *Herlakenden's Case* (3d resol.), 4 Co. 62; *Channon* v. *Patch*, 5 B. & C. 897. Here, while the fund in question is alleged to have arisen from the sale of timber and wood, it is not alleged, nor shown in proof, what part of the fund was produced by the sale of timber, and what part from the sale of wood. Upon the supposition that nothing was converted into firewood that was valuable as timber, it will be necessary that the amount realized for the wood be separately ascertained; as to that extent the complainant is entitled to the corpus of the fund; but as to the amount realized for the timber he is entitled only to the interest thereon during his life.

Unless this ascertainment be made by agreement, I shall refer the case to the auditor to take an account, but if an agreement can be made to obviate the reference, I will then sign a decree in conformity to the principles of this opinion, with directions that the costs be paid out of the fund arising from the sale of the timber, as was done in the case of *Tooker* v. *Annesley*, 5 Sim. 235.

To obviate the reference to the auditor, it was agreed by the parties through their respective counsel, that the sum of five dollars should be taken and considered as the value of the firewood; the court thereupon adjudged that the complainant was entitled to five dollars, the value, as agreed upon, of so much of the trees as were converted into firewood, and that the net amount of the proceeds of sale, after deducting the said sum of five dollars, should be held by the trustee, and the interest thereof paid annually to the complainant during his lifetime, according to the discretion vested in such trustee by the will.

From this decree the complainant appealed.

Julian J. Alexander, for appellant.

H. K. Douglass, for respondent.

The opinion of this court was delivered by

BARTOL, C. J.—The branch of the case relating to the timber is rested upon the opinion of the judge sitting in the Circuit Court, and need not be further discussed.

Decree affirmed.

The question involved in this case has not often been decided, and one is perhaps more surprised that any direct precedents can be produced, than that those precedents should be few.

There are a good many cases upon the kindred questions which have often come up for decision in England, whether life tenant has any title to a fund derived from (1st) timber *wrongfully cut down*, or (2d) timber *felled by order of court*. That timber which has been wrongfully cut down belongs to the party who has the first estate of inheritance is well settled, and in that case the reversioner (or lessor, as the case may be), would be entitled to the whole fund derived from the sale of it, and the life-tenant (or lessee) could have no claim even to the interest of the fund: *Lushington* v. *Boldero*, 15 Beav. 1. Sir JOHN ROMILLY, M. R.: "The equitable doctrine applicable to this and other similar cases is this: that no person shall obtain any advantage of his own wrong. But it is manifest that the tenant for life may obtain very considerable advantage from his own wrong, if he were to cut down timber and obtain the interest of the fund; his income for life would thereby be increased beyond what it would have been if the timber had not been cut." It is equally well settled that where timber has been cut by order of court, that is to say, when the court has ordered the thinning of a wood within proper limits for the purpose of improving the rest of the trees, the proceeds of sale must be invested and the interest paid to the life-tenant: *Wickham* v. *Wickham*, 19 Ves. 419; *Tooker* v. *Annesley*, 5 Sim. 235; *Waldo* v. *Waldo*, 7 Id. 261; *Bagot* v. *Bagot*, 32 Beav. 509. The earlier case of *Bewick* v. *Whitfield*, 3 P. Wms. 266, may be regarded as overruled by *Wickham* v. *Wickham*, in which case Sir SAMUEL ROMILLY, in argument, referring to the earlier case, said "the court was not then in the habit of laying out the money produced" from sale of timber.

The principal case presents the question whether life-tenant is entitled to the interest of a fund derived from timber blown down by a storm, and the learned judge decides that "the reason and justice of the rule (as to timber severed by order of court) equally apply to the case of "windfalls," a decision which will doubtless meet with general approval. Besides the "reason and justice" of the thing, this application of the rule has a recent and direct authority to rest on: *Bateman* v. *Hotchkin*, 31 Beav. 486, cited in the decision. the early case, *Duke of Newcastle* v. *Vane* (cited in *Whitfield* v. *Bewit*, 2 P. Wms. 240, and apparently alluded to in *Bewick* v. *Whitfield*, 3 P. Wms. 267), where "great quantities of timber were blown down in a storm," the contrary was decided, that is to say, the timber was decreed to belong to the remainderman, although there were tenants for life. These two cases are apparently the only ones on the precise question presented by the principal case.

Evidently the point does not come up except where a *large quantity* of timber is blown down, that is to say, *enough to make it worth while to consider*, not only who is entitled to the *corpus* of the fund, but *who is entitled to the interest*. There are in the books a good many *statements* of the law to the effect that remainderman and not life-tenant is entitled to trees blown down (see for instance, *Herlakenden's Case*, 4 Co. 62; *Bowles's Case*, 11 Co. 79), but these statements are made illustratively for the most part, and are meant to negative life-tenant's claim to the *corpus* or to the *whole fund*,

which ordinarily would not be large enough to cause dispute about an *investment* of it. See even the recent case of *Honywood* v. *Honywood*, 43 L. J. Ch. 652 (1874); but any such statement of the law (which, in this case, was *obiter*), must now be considered as made subject to the very reasonable qualification which *Bateman* v. *Hotchkin* introduced.

F. J. B.

Baltimore.

Supreme Court of Indiana.

RICHARDSON *v.* SNIDER.

The party suing upon bills of exchange must show in his pleadings title in himself, and an averment that the plaintiffs "are successors in and to (payee's) business, *and as such* are the legal and *bona fide* holders of the bill of exchange," is not a sufficient allegation of title.

Where one partner retires, but the others continue to do business in the same firm name, the retiring partner is only obliged to give actual notice to parties with whom the firm has directly dealt.

This rule does not extend to require notice to the *successor in business* of a creditor with whom the firm has had dealings, although such successor may have been a clerk in his predecessor's employ, and as such acquired knowledge of who composed the other firm, and after his succession to the business may have continued to deal with the firm under the impression that the retired partner was still a member of it.

ACTION on bills of exchange and a book account. The case is sufficiently stated in the opinion.

McConnell & Tully, for appellant, cited Edwards on Bills and Notes, 2 ed., 237; *Archer* v. *Spencer*, 3 Blkf. 405; *Harter* v. *Ellis*, 6 Id. 154; Wade on Notice, sects. 502, 508–513; *Vernon* v. *Manhattan Co.*, 22 Wend. 183; *Clapp* v. *Rogers*, 12 N. Y. 283; *Wardwell* v. *Haight*, 2 Barb. S. C. 549; Parsons on Partnership 428.

Magee & Jacks, for appellees.

The opinion of the court was delivered by

ELLIOTT, J.—The first and second paragraphs of the complaint of the appellees are founded upon bills of exchange drawn by Louis Snider, and accepted by the firm of Smith & Hall, of which it is alleged all the appellants were members. Demurrers were unsuccessfully addressed to each of these paragraphs, and appellants complain of the action of the court in overruling them.